IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.1001 OF 1988

The State of Maharashtra : Appellant

(Orig.Complainant)

V/s.

Santosh Vithal Bacchav

Age 35 years, Khamkheda Shivar

Taluka Kalwan, District Nasik. : Respondent

(Orig. Accused)

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Mr.D.R.More, Addl. Public Prosecutor for the appellant-State.

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CORAM : D.G.DESHPANDE & S.A.BOBDE,JJ.

DATE : JUNE 6, 2006.

ORAL JUDGEMENT (Per S.A.Bobde,J.)

1. This appeal is preferred by the State against the judgement and sentence passed by the Vth Additional Sessions Judge, Nasik, in Sessions Case No.67 of 1988. The plea of the State is for enhancement of the sentence imposed on the accused-respondent under section 304 Part-I

of the Indian Penal Code. The learned Addl. Sessions Judge has convicted the accused under section 304 Part-I of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for three years and to pay a fine of Rs.200/-, in default to undergo one month's rigorous imprisonment more. Further, the accused-respondent has been convicted under section 342 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one month. The substantive sentences were ordered to run concurrently.

2. The only contention raised by the learned Addl. Public Prosecutor is that the accused-respondent ought not to have been convicted under section 304 Part-I and sentenced to undergo three years' rigorous imprisonment, but ought to have been convicted under section 302.

3. It is, therefore, necessary to set out the incident as found to have occurred by the learned Addl. Sessions Judge.

4. On 21.3.1988 at about 11 p.m. the accused who used to act as a Bhagat and also practised as a Quack returned to his hut along with one Ramkrishna. Since his hut was locked, he went to the nearby house of the deceased Shivaji and got the key from his wife Indubai. The

deceased Shivaji who was sleeping asked his wife as to who had come and then followed the accused to his hut. The accused had gone to the well at that time. So he sat with Ramkrishna and was chatting with him. When the accused returned, he suspected that the deceased was defaming him while talking to Ramkrishna. Hence, a quarrel ensued between the accused and the deceased Shivaji. The two brothers started struggling with each other and went out of the hut. Thereafter, the accused and the deceased went inside the hut and left Ramkrishna to stay outside. The accused closed the door of the hut from inside and locked. Inside, he gave blows to the deceased on his skull near the neck and on the chest and injured Shivaji fatally.

5. Ramkrishna shouted for help and hearing the shouts, neighbour Hiraman came to the scene. Hiraman called Khandu and Pandu for help. They, however, found that the hut was locked from inside. So they removed the frame of the door. They found that Shivaji was lying in a pool of blood and the accused was standing with an iron pipe in his hand by the side of the deceased. Thereafter, the accused left the hut. By then Indubai and Tarabai had also reached the scene.

6. The learned Addl. Sessions Judge framed the following points for consideration and gave the following findings:-

"Points	Findings
1. Whether Shivaji had a homicidal death on 21-3-1988 at about 11-00 p.m. at Khamkhede?	... Yes
2. Whether the accused intentionally or knowingly committed murder of Shivaji?	... Yes
3. Whether the accused committed above crime by deprived of the power of self control by grave and sudden provocation and thus the case comes under Exception-I of Section-300 I.P.C.?	... Yes
4. Whether the accused is guilty under Section 302 or 304 Part-I I.P.C. & 342 ?"	... U/Section 304-I I.P.C. & 342 I.P.C."

7. The post-mortem revealed the following external and internal injuries:-

"External injuries:

(1) Swelling on the left side laternal aspect of neck mastoid and base of skull 5" x 3", red, irregular.

(2) Circular abrasion on the right elbow post. half" x half", red.

(3) Abrasion on the right knee. Half" x half", red, irregular, ant.

(4) Abrasion on the right shoulder top, one fourth" x one fourth", red, irregular.

(5) Abrasion on right side back 6" away from midline on 9th rib, 1" x one fourth", red, irregular.

(6) Abrasion on right side back 7" away from midline on 8th rib, above injury No.5, 1" x one fourth", red.

(7) Two minor abrasions between injury Nos.5 and 6 one fourth" x one fourth" each,

red."

"Internal injuries:

(1) Fracture of the left base near foramin magna 1".

(2) Fracture on petros temporal 2" liner.

(3) Fracture 4" at the base of the occiput.

(4) Fracture of foramin magna half inch.

(5) Fracture of the right side ribs No.8, 9 and 10 in mid-axilliary line.

(6) Hamatoma on the left side occiputal and mastoid region 3" x 2", red, ant."

8. The learned Sessions Judge considered the circumstances of the case and relying on the medical evidence came to the conclusion that the injuries were such as were likely to cause death and were inflicted with the intention to cause death and, therefore, convicted the accused-respondent under section 304 Part-I of the I.P.C. The learned Addl. Sessions Judge found

that the relationship between the brothers were not strained, having regard to the fact that the accused kept the keys of the house with the deceased.

9. The learned Addl. Sessions Judge found that the accused caused death of his brother on a grave and sudden provocation, suspecting that he had been defaming him. There is a clear finding that the accused was deprived of the power of self-control by grave and sudden provocation and, therefore, the accused-respondent has been convicted under the first exception to section 300 read with section 304 of the Indian Penal Code. Having considered the evidence and the finding of the learned Addl. Sessions Judge, we are satisfied that having regard to the relationship between the accused-respondent and the deceased and the suddenness of the provocation and the use of an iron pipe and not a weapon, the death was caused by the accused-respondent without any intention but with the knowledge that it is likely to cause death. The evidence does not disclose any premeditation or planning on the part of the accused-respodnent to cause the death of his brother who himself came to the hut of the accused-respondent.

10. In this view of the matter, we see no merit in the appeal which is hereby dismissed.

Sd/-

D.G. DESHPANDE, J.

Sd/-

S.A. BOBDE, J.